**Schedule ‘D’**

**Supplementary Conditions to**

**CCDC 31 - 2020**

**Service Contract Between Owner and Consultant**

**[EDIT NOTE:]** \*\* remove at the time of contract preparation

The following document is meant to provide a guide and provides suggested Supplementary Conditions for CCDC 31 2020 Service Contract Between Owner and Consultant.

The attached Supplementary Conditions have been collaboratively developed between the Province of BC, the Association of Consulting Engineering Companies of BC (ACEC-BC) and the Architectural Institute of BC (AIBC). If these Supplementary Conditions are used, since the attached Supplementary Conditions deletes GC 6.2 in its entirety, Consultants are advised to negotiate Limits of Liability acceptable to both parties that are appropriate to the specific Project prior to entering into a contract. In addition, the Consultants should obtain independent legal and insurance advice during the negotiations.

The Transferability of documents (Clause 5.2.3) is a unique circumstance and should be addressed for each specific project.

The proposed Insurance limits GC 6.1 are minimums, and each Consultant should consult with their insurance provider to confirm requirements, where applicable.

November, 2023

**Schedule D - Supplementary Conditions**

The CCDC 31 - 2020 - Service Contract Between Owner and Consultant is supplemented and amended as set out in these Supplementary Conditions.

## AGREEMENT BETWEEN OWNER AND CONSULTANT

**ARTICLE A-3 CONTRACT DOCUMENTS**

Add the following:

Schedule D – Supplementary Conditions

These Supplementary Conditions shall have priority over all other contract documents.

**ARTICLE A-4 REMUNERATION FOR THE PROFESSIONAL SERVICES**

Delete Article 4.7 and replace with:

4.7 *Reimbursable Expenses* are the actual expenses, supported by original receipts or invoices, which the *Consultant* incurred in providing the *Professional Services*, as identified in Schedule B – REIMBURSABLE EXPENSES to this Agreement plus an administrative charge of \_\_\_\_\_\_%.

**ARTICLE A-5 PAYMENT**

Delete Article 5.2 and replace with:

5.2 The *Owner* shall pay the *Consultant* within 30 calendar days after the receipt of an invoice in a form acceptable to the *Owner*, or as such shorter period that may be prescribed by the law of the *Place of the Work*. In the event of a disputed invoice, only the disputed amount shall be withheld from payment and the *Owner* shall pay the undisputed amount.

## DEFINITIONS

Delete the definition of Working Day and replace with the following:

## Working Day

A day other than a Saturday, Sunday, statutory holiday, or a day on which Provincial Government offices are open for normal business in British Columbia.

## GENERAL CONDITIONS

**GC 3.1 BUDGET OF THE WORK, CONSTRUCTION COST ESTIMATE, AND BIDS**

In GC3.1.1 delete the words “by more than 15%”.

**GC 4.1 PAYMENT**

Delete paragraph 4.1.2 and replace with:

4.1.2 Any expenditure not defined in Schedule B – REIMBURSABLE EXPENSES, which the *Consultant* intends to invoice as a *Reimbursable Expense*, shall be approved by the *Owner* in writing as a *Reimbursable Expense* prior to the expenditure being incurred. *Reimbursable Expense*s shall be supported by original receipts, invoices and other applicable documentation.

**GC 4.2 PERCENTAGE-BASED FEE**

Add the following:

4.2.5 Where the percentage-based fee is calculated on the *Construction Cost*, the *Consultant* shall not be entitled to payment in respect of change orders resulting from ambiguity in the *Construction Documents,* or other errors or omissions of the *Consultant*.

Add the following:

**GC 4.3 ENCUMBRANCES**

4.3.1 If some or any encumbrance of any kind or nature be placed upon or obtained against the property of the *Owner* as a result of any proven legal liability of the *Consultant*, any *Subconsultant.* and their respective servant(s), agent(s) or employee(s), the *Consultant* shall forthwith cause the same to be discharged. In the event that the *Consultant* shall fail to remove the said encumbrance(s), then the *Owner* shall have the right to pay whatever monies may be necessary to fully discharge any and all such encumbrance(s) and all of its costs may be deducted from monies otherwise payable to the *Consultant*, and the *Owner* shall furthermore be entitled to any additional costs that it may thereby incur.

Add the following:

**GC 4.4 RIGHT OF SET-OFF**

4.4.1 The *Consultant* acknowledges the effect of Section 38 of the Financial Administration Act.

## GG 5.1 TERMINATION AND SUSPENSION

## Delete paragraph 5.1.11 and replace with:

## If the *Owner* suspends performance of the *Professional Services* at any time for more than 120 consecutive calendar days through no fault of the *Consultant*, the *Consultant* may terminate the *Contract* upon providing not less than 14 calendar days *Notice in Writing* to the *Owner*.

## Add a new paragraph 5.1.13:

## 5.1.13 In addition to the amounts recoverable by the *Owner* under paragraph 5.1.7, the *Owner* may recover from the *Consultant* any other demonstrable costs the *Owner* may have sustained as a result of the termination of the *Contract*.

## GC 5.2 OWNERSHIP AND USE OF DOCUMENTS, PATENTS AND TRADEMARKS

Add the following to paragraph 5.2.2:

## Submissions or distribution of the *Instruments of Service,* including all software and electronic media, to meet official regulatory requirements or for other purposes in connection with the *Project* is not to be construed as publication in derogation of the *Consultant*'s rights set out in GC 5.2.

Delete paragraph 5.2.3 and replace with:

The *Consultant* grants to the *Owner* a non-exclusive, perpetual, irrevocable, royalty-free worldwide license to use, reproduce and modify the Instruments of Service for the internal purposes of the *Owner*, including in relation to the *Owner’s* use and occupancy of the *Project*, its renovations, additions or alterations to the completed *Project*. The *Owner* shall indemnify the *Consultant* against claims and costs (including reasonable legal costs), excluding consequential damages, arising from personal injury or property damage to the extent caused by (a) the *Owner’s* unauthorized use of the *Instruments of Service,* or (b) modifications made by the *Owner* to the *Instruments of Service*.

Delete paragraphs 5.2.6 and 5.2.7 and replace with:

5.2.6 Any alterations to or unauthorized use of the *Instruments of Service* shall be at the *Owner’s* sole risk. In no event shall the *Consultant* be responsible for any damages, costs, or other liability of any kind whatsoever arising in consequence of any alterations or unauthorized use.

5.2.7 The *Owner* shall not assign, transfer or sub-license any of its rights under GC 5.2 to any third party without the prior written consent of the *Consultant*, which shall not be unreasonably withheld, provided that the *Owner* may assign, or transfer any of its rights under GC 5.2 without consent to any public agency as defined in the *Public Agency Accommodation Act* or a government body or a government corporation, as defined in the *Financial Administration Act*, that has an interest in the *Project*.

Add the following:

5.2.10 Notwithstanding any other provision of the *Contract*, the rights and obligations of the parties pursuant to this GC 5.2 shall survive the expiration or sooner termination of the *Contract*.

## GC 5.4 CONFIDENTIALITY AND IDENTIFICATION

Delete GC 5.4 in its entirety and replace with the following:

5.4.1 Subject to GC 8 – FREEDOM OF INFORMATION AND PROTECTION OF PRIVACY ACT, the *Consultant* shall keep confidential all matters related to the performance of the *Contract*, regardless of form (written, oral, visual or other), including but not limited to technical drawings and manuals, designs and concepts data and surveys, layouts and schedules, all matters related to *Project* finances, personnel and suppliers, and all deliverables, commercial and legal issues relating to or arising out of the performance of the *Contract*.

5.4.2 The *Consultant* shall not divulge any information that has been given to the *Consultant* or acquired by the *Consultant* on a confidential basis in the course of carrying out the *Professional Services*, except to authorized employees, assignees, transferees or *Subconsultants* and other contractors who need to know and then only to the extent required to enable such persons to fulfil the obligations of the *Consultant* under the *Contract*.

5.4.3 No confidential information shall be used by the *Consultant* on any other project or work without the prior written consent of the *Owner*.

5.4.4 The *Consultant* shall not publish any statement, paper, photograph or document or hold any ceremony with respect to the *Professional Services* or the *Work* without the prior written approval of the *Owner,* which shall not be unreasonably withheld.

5.4.5 The limitations on the use and disclosure of the confidential information received shall not apply to information which (a) was known to, and disclosed by, the *Consultant* before its receipt from the *Owner*; or (b) was learned by the *Consultant* from a third party entitled to disclose it, and disclosed by the *Consultant* prior to its receipt from the *Owner*; or (c) becomes known publicly other than through the *Consultant*; or (d) is authorized in writing by the *Owner* for disclosure; or (e) is disclosed pursuant to the requirements of a government authority or judicial order.

**GC 6.1 INSURANCE**

Delete GC 6.1.1 to GC 6.1.5 and replace with:

6.1.1 The *Consultant* shall, without limiting its obligations or liabilities herein and at its own expense, provide and maintain the following insurances with insurers licensed in British Columbia and in form and amounts acceptable to the *Owner:*

 **[Select only one option (either $2 million or $5 million CGL)]**

.1 Commercial General Liability in an amount not less than Two Million Dollars ($2,000,000)inclusive per occurrence against bodily injury and property damage. The insurance will name the *Owner* as an additional insured, include a cross liability clause, and be endorsed to provide the *Owner* with 30 calendar days’ advance written notice of cancellation.

.1 Commercial General Liability in an amount not less than Five Million Dollars ($5,000,000) inclusive per occurrence against bodily injury and property damage. The insurance will name the *Owner* as an additional insured, include a cross liability clause, and be endorsed to provide the *Owner* with 30 calendar days’ advance written notice of cancellation.

**[Delete paragraph below if the “Professional Services” are not leading to construction]**

 If the *Owner* is to insure against commercial general liability insurance on a single *Project* basis (Wrap Up Liability Insurance as described in paragraph 6.1.6) for the *Consultant* and its *Subconsultant(s)*, the coverage referred to under paragraph 6.1.1.1 above is not required during the period that the Wrap Up Liability insurance is in force.

.2 Owned or Non-Owned Aircraft (including unmanned aircraft vehicles) Liability Insurance if used directly or indirectly in the performance of the *Professional Services*, subject to not less than Two Million Dollars ($2,000,000) inclusive per occurrence for bodily injury, death, and damage to property including loss of use thereof and including aircraft passenger hazard where applicable. The insurance will name the *Owner* as an additional insured, include a cross liability clause and be endorsed to provide the *Owner* with 30 calendar days’ advance written notice of cancellation.

This insurance shall be maintained continuously from commencement of the *Professional Services* involving aircraft (including unmanned aircraft vehicles) until such work is completed.

.3 Owned or Non-Owned Watercraft Liability Insurance if used directly or indirectly in the performance of the *Professional Services*, subject to limits of not less than Two Million Dollars ($2,000,000) inclusive per occurrence for bodily injury, death, and damage to property including loss of use thereof. The insurance will name the *Owner* as an additional insured, include a cross liability clause and be endorsed to provide the *Owner* with 30 calendar days’ advance written notice of cancellation.

This insurance shall be maintained continuously from commencement of the *Professional Services* involving watercraft until such work is completed.

.4 Professional (Errors and Omissions) Liability Insurance protecting the *Consultant*, and if applicable its insurable *Subconsultant(s)* and their respective servants, agents or employees, against any loss or damage arising out of the professional services rendered by any of them under the *Contract*. Such insurance shall be for an adequate amount acceptable to the *Owner* and shall in any event be not less than:

.i For construction valued at ZERO DOLLARS ($0.00) to FIFTEEN MILLION DOLLARS ($15,000,000):

**ONE MILLION DOLLARS ($1,000,000) per claim;**

.ii For construction valued over FIFTEEN MILLION DOLLARS ($15,000,000) to THIRTY MILLION DOLLARS ($30,000,000):

**TWO MILLION DOLLARS ($2,000,000) per claim**; or

.iii For construction valued over THIRTY MILLION DOLLARS ($30,000,000) to SEVENTY-FIVE MILLION DOLLARS ($75,000,000):

**FIVE MILLION DOLLARS ($5,000,000) per claim**.

Construction valued over $75 million must be referred to the Risk Management Branch. The *Consultant* may be required to insure against Professional (Errors and Omissions) Liability on a single *Project* basis.

 The *Consultant*’s *Subconsultant(s)* shall maintain a minimum of $250,000 Professional (Errors and Omissions Liability Insurance.

 This insurance shall be maintained continuously from commencement of the *Professional Services* until contract completion.

.5 Automobile Liability insurance with respect to owned or leased vehicles used directly or indirectly in the performance of the *Professional Services*, subject to limits of not less than Two Million Dollars ($2,000,000) inclusive per occurrence.

.6 The *Consultant* shall cause its *Subconsultant(s)* to purchase and maintain insurance appropriate to the scope and nature of the *Subconsultant(s)* obligations.

6.1.2 All insurance described in GC 6.1.1.1, GC 6.1.1.2, GC 6.1.1.3 and GC 6.1.1.4 above must:

.1 be primary; and

.2 not require the sharing of any loss by any insurer of the *Owner*.

6.1.3 If the *Owner* considers any matter to be a negligent act, error or omission of the *Consultant* or of a *Subconsultant* engaged by the *Consultant*, the *Owner* shall promptly notify the *Consultant* in writing accordingly. The *Consultant* shall thereupon take the necessary steps, including advising any *Subconsultant* so affected, to preserve its coverage under any professional liability insurance policy that may apply.

6.1.4 The *Consultant* shall provide the *Owner* with proof of insurance for those insurances required to be provided by the *Consultant* prior to the commencement of the *Contract* in the form of a completed certificate of insurance. The *Consultant* shall also provide a certified copy of any required policies to the *Owner* upon request.

6.1.5 The *Consultant* shall provide, maintain and pay for any additional insurance which it is required to provide by law or which it considers necessary.

 **[Delete GC 6.1.6 in its entirety if the “Professional Services” are not leading to construction]**

6.1.6 For projects with an estimated project cost of $5,000,000 or greater, the *Owner* shall purchase and maintain for its own benefit, as well as for the benefit of the *Consultant* and its *Subconsultant(s)*:

1. Commercial General Liability – Wrap Up Insurance with a limit of not less than Ten Million Dollars ($10,000,000), inclusive per occurrence, and not less than Ten Million Dollars ($10,000,000) general aggregate for third party bodily injury, death, and damage to property including loss of use thereof, product/completed operations liability with a limit of not less than Ten Million Dollars ($10,000,000) aggregate. The insurance shall cover the *Owner*, *Contractor, Consultant*, *Subconsultant(s), Other Consultant(s),* and anyone employed by them to perform part or parts of the *Work* but excludes suppliers whose only function is to supply and/or transport products to the project site. The insurance does not extend to activities, works, jobs or undertakings of the insureds other than those directly related to the *Work* of the *Construction Contract.* The insurance shall contain a waiver of the *Owner’s* rights of subrogation against all protected entities except where a loss is deemed to have been caused by or resulting from any error in design or any other professional error or omission.

This insurance shall be maintained continuously from commencement of the *Work* and kept in force at a minimum until the *Project* is ready for use or is being used for the purpose intended and is so confirmed in writing by the *Consultant* in consultation with the *Contractor* and the *Owner,* plus with respect to completed operations coverage a further period of twenty-four (24) months.
2. Course of Construction (Builders Risk) coverage, against “All Risks” of direct physical loss or damage including the peril of equipment breakdown, and will cover all materials, property, structures and equipment purchased for, entering into, or forming part of the *Work* while located anywhere in Canada or the continental United States of America during construction, erection, installation and testing and commissioning, but such coverage may be subject to off-site storage and transit exposure sub-limits and shall not include coverage for the *Consultant’s, Subconsultant(s), Other Consultant(s) or Contractor’s* equipment of any description.The coverage shall include as a protected entity, each of the *Owner*, *Contractor*, *Consultant, Subconsultant(s), and Other Consultant(s)* who are engaged in the *Work.* The coverage will contain a waiver of the *Owner’s* rights of subrogation against all protected entities except where loss is deemed to have been caused by or resulting from an error in design or any other professional error or omissions, or manufacturers (not employees of a protected entity). The insurance will be maintained continuously from commencement of the *Work* and kept in force until the *Project* is ready for use or is being used for the purpose intended and is so confirmed in writing by the *Consultant* in consultation with the *Contractor* and the *Owner.*
3. In the event of loss, the *Consultant* shall immediately notify the *Owner* with full details of the incident. The *Consultant* shall act in the best interests of the *Owner* and any adjustment of the loss with insurers and repairs shall be carried out subject to the instructions of the *Owner.* The *Consultant* shall be entitled to such reasonable extension of time for completion of the services as the *Owner* may decide.
4. The *Owner* shall, upon request, provide the *Consultant* with proof of insurance for those coverages and insurances required to be provided by the *Client* prior to commencement of the *Work* and subsequent certified copies of policies within a reasonable time period thereafter.

## GC 6.2 INDEMNIFICATION AND LIMITATION OF LIABILITY

Delete GC 6.2.1 to GC 6.2.10 and replace with:

6.2.1 Notwithstanding the provision of insurance coverage by the *Owner*, the *Consultant* hereby agrees to indemnify and save harmless the *Owner*, its successor(s), assign(s) and authorized representative(s) and each of them from and against losses, claims, damages, actions, and causes of action, (collectively referred to as “*Claims*”) that the *Owner* may sustain, incur, suffer or be put to at any time either before or after the expiration or termination of this Agreement, that arise out of errors, omissions or negligent acts of the *Consultant* or the *Subconsultant(s),* servant(s), agent(s) or employee(s) under this Agreement, excepting always that this indemnity does not apply to the extent, if any, to which the *Claims* are caused by errors, omissions or the negligent acts of the *Owner*, its *Other Consultant(s)*, assign(s) and authorized representative(s) or any other person.

6.2.2 The obligation to indemnify as set forth in GC 6.2 shall be inclusive of interest and all legal costs.

6.2.3 The *Consultant* shall be entitled to rely upon product information published by manufacturers and shall not be liable for relying on information or representation which it reasonably believes to be accurate or for the failure of any manufactured product or any manufactured or factory assembled system of components to perform in accordance with the manufacturer’s specifications, product literature or written documentation where it would be reasonable to rely on the same.

6.2.4 Where the *Consultant* is a corporation or partnership, the *Owner* and Other Consultants shall limit any claim they may have to the corporation or partnership, without liability on the part of any officer, director, member, employee, or agent of such corporation or partnership.

6.2.5 The *Consultant* is not responsible for the identification, reporting, analysis, evaluation, presence, handling, removal or disposal of hazardous substances at or adjacent to the Place of the Work, unless specified in Schedule A – CONSULTANT’S SCOPE OF PROFESSIONAL SERVICES, or for the exposure of persons, property or the environment to hazardous substances at or adjacent to the *Place of the Work*.

6.2.6 This indemnification shall survive the *Contract*.

6.2.7 The *Consultant* shall not be liable, in contract nor in tort, for:

1. any changes made by the *Owner*, the *Contractor*, or other third parties to the *Consultant*’s design or to the *Construction Documents*;
2. acts, omissions or errors of *Other Consultant*s; or
3. the result of any finding or interpretation with the *Construction Documents* rendered by *Other Consultants* in accordance with the *Construction Documents*.

**[EDIT NOTE:]** \*\* remove at the time of contract preparation

\*\*update prior to posting, for project specific requirements and contact Risk Management Branch, if required [[Risk Management for Government & Provincial Public Sector - Province of British Columbia](https://www2.gov.bc.ca/gov/content/governments/services-for-government/internal-corporate-services/risk-management)]

Add the following:

**PART 8 OTHER CONDITIONS**

**GC 8 FREEDOM OF INFORMATION AND PROTECTION OF PRIVACY ACT**

8.1 Notwithstanding GC 5.2 OWNERSHIP AND USE OF DOCUMENTS, PATENTS AND TRADEMARKS, and for the purposes as set out under GC 5.4 CONFIDENTIALITY AND IDENTIFICATION, all documents submitted to the *Owner* will be considered to be in the custody or control of the *Owner* and as such are subject to the Freedom of Information and Protection of Privacy Act, R.S.B.C. 1996, c165.

**GC 9 INFORMATION TECHNOLOGY RELATED THREATS**

9.1 The *Consultant* shall notify the *Owner* as soon as reasonably possible of the *Consultant’s* identification of a breach or incident that has affected, or may affect, *Owner* information and shall take all reasonable steps to minimize the impact of the breach or incident on the *Owner’s* information.

9.2 The *Owner* shall notify the *Consultant* as soon as reasonably possible of the breach or incident that has affected, or may affect, project information.